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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re
MR. TORTILLA, INC.,
Debtor.

) Case No. 1:24-bk-10228-VK
) Chapter 11
)
) **U.S. TRUSTEE'S LIMITED OBJECTION**
) **TO DEBTOR'S MOTION FOR AN**
) **ORDER AUTHORIZING DEBTOR TO**
) **SATISFY PRE-PETITION CLAIMS OF**
) **CRITICAL VENDOR AMAZON.COM**
) **SERVICES, LLC NECESSARY FOR**
) **DEBTOR'S CONTINUED OPERATION**
)
) Date: March 7, 2024
) Time: 1:30 pm
) Ctrm: 301
)
)

TO THE HONORABLE VICTORIA KAUFMAN, UNITED STATES BANKRUPTCY
JUDGE, DEBTOR, AND OTHER PARTIES IN INTEREST:

The United States Trustee (“U.S. Trustee”) has reviewed the Debtor’s Motion for an Order Authorizing Debtor to Satisfy Pre-Petition Claims of Critical Vendor Amazon.com Services, LLC Necessary for Debtor’s Continued Operation [Dkt No. 46] (the “Motion”) and files this limited objection.

Mr. Tortilla (the “Debtor”) is requesting that the Court allow it to pay the following pre-petition claims of Amazon.com Services, LLC (“Amazon”):

- Fees relating to advertising, delivery, service charges, taxes, contract discounts, adjustments, and other amounts incurred pursuant to the Amazon Vendor Terms and Conditions Contract not to exceed 19% (“Vendor Fees”), and
 - Fees relating to advertising, delivery, service charges, taxes, and other amounts due pursuant to the Amazon Business Solutions Agreement for the Debtor’s U.S. Amazon account and Canada Amazon account (“Amazon Fees”).

In addition to these fees, the Motion is requesting approval for Amazon to deduct from the U.S. Amazon account an additional \$1,000.00 every month to be applied toward the \$40,515.89 pre-petition balance owed by the Debtor until paid in full.

The Motion states that the Debtor's sales through Amazon comprise roughly 62% of its total revenue. The Debtor contends that if its ability to sell products on Amazon and to transact business with Amazon is terminated or interrupted in any way, its business will be paralyzed which in turn will reduce the Debtor's revenue and its ability to propose a plan of reorganization. The Debtor contends that Amazon is essential to its business and that payment of their claims is necessary to avoid a reduction in its revenue. The Debtor relies on §§ 105(a), 363(c) and 503(b)(9) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6003(b) as authority for approval of the payment of Amazon's pre-petition claims.

The U.S. Trustee notes that Amazon is not listed on the Debtor's Schedule D or Schedule E/F that was filed on February 28, 2024.¹ In addition, the Motion does not state how much in pre-petition Vendor Fees and Amazon Fees the Debtor seeks to pay Amazon. While the payment of the Vendor Fees and Amazon Fees may be necessary to avoid immediate and irreparable harm to the Debtor's business operations, additional information needs to be provided so interested parties know how much the Debtor is seeking authority to pay and that the request is being limited to a proper amount. Further, to the extent that the Debtor is relying on

¹ Amazon Capital Services, Inc. is listed as a secured creditor on Schedule D. The Motion, however, is silent as to whether Amazon is an affiliate/subsidiary of Amazon Capital Services, Inc. If there is a relationship between these entities, it needs to be disclosed and an explanation provided as to how that relationship affects Amazon's pre-petition claims.

1 § 503(b)(9) for this request, then more evidence and information is needed to determine what
2 goods were received within 20 days before the petition date. At this point, it is unclear if the
3 Vendor Fees and Amazon Fees relate to goods provided within 20 days of the petition date or if
4 § 503(b)(9) even applies to this request.

5 In addition, it is unclear why there is a \$40,515.89 balance owing in the U.S. Amazon
6 account. The Motion states that the Amazon Fees were normally automatically deducted from
7 the funds in the seller accounts before Amazon issued payment to the Debtor. Motion at 3. If
8 this was occurring, then what is this balance for and why is it necessary for this portion of
9 Amazon's pre-petition claim to be repaid outside of the statutory priority scheme? The Ninth
10 Circuit has stressed that “[a]bsent compelling reasons, [it] deem[ed] it unwise to tamper with the
11 statutory priority scheme devised by Congress.” *In re B&W Enters., Inc.*, 713 F.2d 534, 537 (9th
12 Cir. 1983).²

13 The U.S. Trustee does not object to the Debtor paying Amazon for the “contemporaneous
14 services” being performed post-petition; however, additional information needs to be provided
15 about the pre-petition amounts the Debtor wants to pay relating to the Vendor Fees and Amazon
16 Fees and why monthly payments towards the outstanding balance in the U.S. Amazon account
17 are necessary before the relief being sought in the Motion is granted. If the Debtor is able to
18 provide this information and show that the amounts are reasonable and necessary, then the U.S.
19 Trustee requests that:

20 1) a condition of Amazon receiving payment(s) on its pre-petition claims is that Amazon
21 continues to perform post-petition services for the Debtor,

22 2) the Debtor be required to maintain a matrix tracking the amount and date of the
23 payments made to Amazon towards the pre-petition claims, that would be submitted as part of
24 the Debtor's monthly operating report, and

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26

27 ² It is also unclear why the U.S. Amazon account requires an additional \$1,000 per month
28 to pay down the \$40,515.89 pre-petition balance, whereas similar treatment does not appear to be
 needed for the Canada Amazon account, which allegedly had a pre-petition balance of
 \$48,221.40.

1 3) any payments to Amazon towards its pre-petition claims be subject to recovery by the
2 estate to the extent they prove to be improvident or result in a higher dividend than Amazon is
3 entitled to receive at the conclusion of the case.

4 Dated: March 6, 2024

UNITED STATES TRUSTEE

5 By: /s/ Katherine C. Bunker

6 Katherine C. Bunker

7 Trial Attorney

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

915 Wilshire Blvd., Ste. 1850
Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*): U.S. Trustee's Limited Objection to Debtor's Motion for an Order Authorizing Debtor to Satisfy Pre-Petition Claims of Critical Vendor Amazon.com Services, LLC Necessary for Debtor's Continued Operation

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 3/6/24, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 3/6/24, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 3/6/24, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Michael.berger@bankruptcypower.com
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Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

3/6/24 Veronica Hernandez
Date Printed Name

/s/ Veronica Hernandez
Signature

BY NOTICE OF ELECTRONIC FILING

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